

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

VIRGINIA INNOVATION SCIENCES, INC.,

Plaintiff,

V.

AMAZON.COM, INC.,

Defendant.

Case No. 1:16-CV-00861(LO-MSN)

**MEMORANDUM OPINION REGARDING THE COURT'S ENTRY OF JUDGMENT
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 54(B) (DKT NO. 74)
AND ORDER CERTIFYING THE JUDGMENT FOR IMMEDIATE APPEAL**

On February 9, 2017, the Court issued an Order entering partial judgment of invalidity of U.S. Patent Nos. 7,899,492, 8,050,711, 8,903,451, 8,948,814, 9,118,794, 8,712,471, 9,286,853, and 9,355,611 (collectively, the “’492 patent family”) and judgment in favor of defendant Amazon.com, Inc. (“Amazon”) with respect to counts I through VIII of the amended complaint of plaintiff Virginia Innovation Sciences, Inc. (“VIS”). (Dkt. No. 74.) The Court now issues this memorandum opinion clarifying its basis for doing so and certifies its invalidity judgment for appeal to the United States Court of Appeals for the Federal Circuit (“Federal Circuit”).

On January 5, 2017, the Court granted Amazon’s motion to dismiss VIS’s claims asserting the ’492 patent family based on its finding that the patents failed to claim patent-eligible subject matter under 35 U.S.C. § 101. (Dkt. No. 57.) The same day, in a related case, *Virginia Innovation Sciences, Inc. v. HTC Corporation, et al.*, No. 1:16-cv-01350 (E.D. Va.) (the “HTC case”), the Court dismissed VIS’s claims related to the ’492 patent family on the same ground.

(HTC case, Dkt. No. 77.) As to HTC's motion, the Court determined:

There is only one determinative legal issue in this motion: are the patents in the '492 family directed to patent-eligible subject matter under 35 U.S.C. § 101? This question precisely mirrors the question presented in the Amazon Case, which was decided in this Court's Memorandum Opinion on January 5, 2017. . . . Because the § 101 eligibility determination is a purely legal question, the Memorandum Opinion in the Amazon Case applies equally here.

(*Id.* at 2.) The Court did not issue a separate memorandum opinion in the HTC case, but instead cited and relied on its memorandum opinion in this case dismissing the '492 patent family claims. (*Id.*) VIS appealed the order in the HTC case to the Federal Circuit (the "VIS/HTC appeal"). (HTC case, Dkt. No. 79.) VIS initially did not appeal the order in this case because additional claims remain here. On February 3, 2017, Amazon filed a motion for entry of judgment pursuant to Federal Rule of Civil Procedure 54(b). (Dkt. Nos. 67-68.) By order dated February 9, 2017, the Court granted Amazon's motion and entered partial judgment of invalidity of the '492 patent family. (Dkt. No. 74.) On February 15, 2017, VIS filed a notice of appeal of the Court's judgment. (Dkt. No. 77.) That appeal remains pending.

Federal Rule of Civil Procedure 54(b) authorizes the Court, in its discretion, to enter judgment with respect to less than all claims or parties in an action "if the court expressly determines that there is no just reason for delay." Fed. R. Civ. P. 54(b). In granting Amazon's motion and entering judgment, the Court made such a determination. The Court based that determination on the fact that its prior order finding the claims of the '492 patent family directed to patent-ineligible subject matter was a final judgment with respect to those claims and the fact that the VIS/HTC appeal would have gone forward whether or not the Court entered judgment in this case. Entry of partial judgment will ensure an efficient appeal process while avoiding prejudice to the parties, in particular to Amazon who would otherwise have no opportunity to participate in an appeal of the Court's order in this case. The Court thus now expressly finds that there is no

just reason for delaying the appeal of its judgment with respect to the '492 patent family, and hereby certifies that judgment for immediate appeal under Rule 54(b) effective *nunc pro tunc* as of February 9, 2017.

ENTERED THIS 30th day of March 2017.



Hon. Liam O'Grady
United States District Judge